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FISCAL IMPACT STATEMENT

LS 6607

BILL NUMBER: SB 344

NOTE PREPARED: Feb 26, 2013

BILL AMENDED: Feb 25, 2013

SUBJECT: Child Protection Registry.

FIRST AUTHOR: Sen. Head

FIRST SPONSOR: Rep. McNamara

BILL STATUS: As Passed Senate

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill has the following provisions:

- (1) Requires the Secretary of State (SOS) to establish the child protection registry.
- (2) Permits a person to register with the registry certain "contact points" that belong to a minor.
- (3) Defines a contact point to be:
 - (a) an electronic mail address;
 - (b) an instant message identity;
 - (c) a mobile or other telephone number;
 - (d) a facsimile number; or
 - (e) a similar point of communication defined by rule by the SOS.
- (4) Permits a school or other institution that primarily serves minors to register its domain name with the registry.
- (5) Provides that a person may not send a communication to a contact point that has been registered for more than 30 days if the communication has the express purpose of advertising or promoting a product or service that a minor is prohibited by law from purchasing, unless the advertisement is from a retail establishment that:
 - (a) is advertising a product that may be purchased by an adult; and
 - (b) verifies the age of the purchaser at the point of sale when age restricted products are sold.
- (6) Permits a communication that is in response to a direct inquiry from a consumer if the person verifies the consumer's age.
- (7) Requires persons who send such communications to check the registry (for a fee) to ensure compliance with the law, and provides that the fee will be deposited in the Electronic and Enhanced Access Fund.
- (8) Provides that a contractor may not be paid more than 80% of the fees generated.

- (9) Authorizes the SOS to adopt rules to administer the statute and the registry.
(10) Provides for civil enforcement of the statute.

Effective Date: July 1, 2013.

Explanation of State Expenditures: *Summary:* This bill will increase the expenditures of the Secretary of State (SOS) to provide a Child Protection Registry and also increase workload of the SOS to prosecute civil cases against businesses that violate provisions of the bill.

To the extent that (1) the SOS contracts out the requirement and (2) the costs of maintaining the contract are paid for by fees collected from businesses that wish to send adult communications, this bill may not increase state expenditures to maintain the Registry.

Additional Information:

The Child Protection Registry would be available to all state residents who wish to register contact points (email addresses, instant messaging identity, mobile or other telephone numbers, or fax number) in much the same fashion as the federal “Do Not Call” registry. The purpose of the Child Protection Registry is to shield minors from material that is considered harmful to minors (e.g., advertising of adult products like alcohol and tobacco, as well as pornography). Registration in the Child Protection Registry is to be free.

(Revised) Businesses who wish to send adult communications would be required to scrub their contact lists of individuals who are registered in the state Child Protection Registry. Businesses would be charged \$3 per 100 contact points in the Registry (up to a maximum charge of \$62,000 per year, or 2.07 million contact points). Although the bill specifies that the contract receive a maximum of 80% of the fees collected from businesses, it is possible that the amounts collected from these fees could finance the costs of the Child Protection Registry.

Currently, the states of Michigan and Utah utilize a child protection registry which is contracted out to UnSpam, Inc. Contract expenditures for these states are not known.

Explanation of State Revenues: *Summary:* This bill could increase state revenue from civil penalties and civil court fees. Additionally, the bill could increase revenue to the Electronic and Enhanced Access Fund from fees paid by participating businesses. Increases in revenue are indeterminable.

Additional Information:

Registry Fees: The fees collected from participating businesses would be deposited in the Electronic and Enhanced Access Fund (which is established under current law). Because the bill allows the contracted entity to retain a maximum of 80% of the fees collected from participating businesses, the Electronic and Enhanced Access Fund would receive at least 20% of these fees. As a result, revenue to the Electronic Enhanced Access Fund could increase, but by an indeterminable amount.

Court Fee Revenue: If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city

or town court.

In addition, some or all of the judicial salaries fee (\$20), public defense administration fee (\$5), court administration fee (\$5), and the judicial insurance adjustment Fee (\$1) are deposited into the state General Fund. Revenue from the pro bono services fee (\$1) is transferred by the State Auditor to the Indiana Bar Foundation for use to assist with pro bono legal services programs in Indiana. And proceeds from the automated record keeping fee (\$5) are deposited into the state User Fee Fund.

Additional fees may be collected at the discretion of the judge and depending upon the particular type of case. The SOS may recover reasonable costs of investigation and maintaining an action and attorney's fees.

Civil Penalties: Under the bill, businesses who are determined to have sent adult communications to individuals who are listed on the Registry are subject to civil penalties. Enforcing the requirements of the bill would fall on the SOS. The SOS can seek injunction against violating businesses to enjoin future violations, as well as civil penalties of \$10,000 for the first violation and \$25,000 for each violation after the first violation. Each communication sent to a registered contact point in the Registry is considered a separate violation.

For example, if a business sent adult communication to 10 individuals listed in the Registry, approximately \$235,000 from civil penalties could be collected (\$10,000 for the first offense and \$25,000 for the remaining 9 offenses).

Explanation of Local Expenditures:

Explanation of Local Revenues: *Court Fee Revenue:* If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge, depending upon the particular type of case.

Persons filing a civil case are also be required to pay the following fees that are deposited in local funds.

The document storage fee (\$2) is deposited into the clerk record perpetuation fund.

The following fees are deposited into the general fund of the county in which the court is located:

- Document fees (\$1 per document) are charged for preparing transcripts or copies of record or certificate under seal.
- Service fee (\$10) collected from the filing party for each defendant beyond the first cited in the lawsuit.

State Agencies Affected: SOS.

Local Agencies Affected: Civil courts.

Information Sources: Michigan State Legislature; Utah State Legislature.

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